

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

RECEIVED
 AUG 23 1999
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

| | | |
|--------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| |) | |
| Amendment of Section 73.202(b) |) | MM Docket No. 99-243 |
| Table of Allotments |) | RM-9675 |
| FM Broadcast Stations |) | |
| (Thorndale, Texas) |) | |

To: Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

COMMENTS OF
HOUSTON CHRISTIAN BROADCASTERS, INC.

Houston Christian Broadcasters, Inc., (hereafter "HCBI") by its undersigned counsel, hereby respectfully submits these comments in support of its PETITION FOR RULE MAKING, filed on November 30, 1998, requesting that the Commission modify the FM Table of Allotments in Section 73.202(b) of the Rules and Regulations to assign FM channel 286A to Thorndale, Texas, and to reserve the allocation for noncommercial, educational use. In addition, it was requested that the Commission amend HCBI's pending application (File No. BPED-970911MA) for the FM channel 257A allotment at Thorndale, Texas, to

No. of Copies rec'd 017
 List ABCDE

specify operation on Channel *286A with full "cut-off" protection.¹ The Commission issued a "Notice of Proposed Rule Making" on July 2, 1999, seeking public comment on the HCBI Petition.²

I. BACKGROUND.

1. HCBI is one of six (6) applicants for the unused FM channel 257A allotment to Thorndale, Texas.³ HCBI is the only applicant proposing to use the Thorndale FM allotment on a noncommercial, educational basis. HCBI is the current Commission licensee of a number of FM broadcast stations licensed to operate in the portion of the FM band reserved for noncommercial, educational use.⁴ Accordingly, HCBI has been determined by the Commission to be eligible to own and operate broadcast stations on frequencies reserved for noncommercial, educational use.

2. The mutually-exclusive Thorndale FM applications have been held in abeyance by the Commission due to the suspension of the comparative licensing procedures in such situations. *See, Bechtel v. FCC*, 10 F.3d 875 (1993). While the Commission has recently taken action to implement a competitive bidding

¹ As noted in the Engineering Statement to the Petition, the presently specified HCBI transmitter site can be utilized in connection with this channel with no additional changes in the application.

² DA 99-1292.

³ The other applicants are Centex Broadcasting Company, LTD (BPH-970908MM), Charles R. Crawford (BPH-970911ME); Double K Broadcasting (BPH-970911MT); Elgin FM Limited Partnership (BPH-970911MU); and Roy E. Henderson d/b/a Jackson Lake Broadcasting Company (BPH-970911MI).

⁴ HCBI is the licensee of KHCB-FM, Houston, Texas; KHCB(AM), Galveston, Texas; KHCH(AM), Huntsville, Texas; KKER(FM), Kerrville, Texas; and holds a construction permit for a noncommercial FM station at Wake Village, Texas, BPED-970630MB.

procedure to resolve such cases⁵, this will not allow for the expeditious resolution of the Thorndale proceeding. In the *Comparative Bidding Order*, the Commission found that the exemption from the competitive bidding provisions in Section 309(j)(2)(C) of the Communications Act for noncommercial, educational broadcasters may preclude it from using competitive bidding to award broadcast station licenses in situation where there are both commercial and noncommercial applicants for a frequency. Thus, the broadcast spectrum auction that is scheduled for September 28, 1999 does not include the Thorndale FM applications.

**II. HCBI FULLY SUPPORTS THE ASSIGNMENT OF FM CHANNEL *286A
TO THORNDALE, TEXAS AND ITS RESERVATION FOR
NONCOMMERCIAL, EDUCATIONAL USE.**

3. HCBI fully supports the proposed assignment of FM channel *286A to Thorndale, Texas, and its reservation for noncommercial, educational use. In the event this assignment is made, and the HCBI application is amended to specify the use of that channel, HCBI will promptly build its noncommercial FM station at Thorndale, Texas. Should the Commission assign the FM channel *286A to Thorndale, but not allow HCBI to amend its application to specify the use thereof, HCBI will seek authority to operation on that allocation and build and operate a noncommercial FM station thereon if authorized to do so.

⁵ See, *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, FCC 98-194 (released August 18, 1998),

Wherefore, Houston Christian Broadcasters, Inc. respectfully supports the amendment of Section 73.202(b) of the FM Table of Allotments as follows:

| <u>Community</u> | <u>Present Allocation</u> | <u>Proposed Allocation</u> |
|------------------|-------------------------------|--------------------------------|
| Thorndale | 257A | 257A, *286A |

HCBI also supports its pending application (BPED-970911MA) for the present FM channel 257A allotment being amended, with cut-off protection, to specify FM channel *286A upon the allocation of that channel to Thorndale.

Respectfully submitted,

Houston Christian Broadcasters, Inc.

By:


Jeffrey D. Southmayd

Its Attorney

Southmayd & Miller
1220 Nineteenth Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 331-4100

Date: August 23, 1999

hereafter referred to as the "Comparative Bidding Order."

CERTIFICATE OF SERVICE

I, Jeffrey D. Southmayd, do hereby certify that I have caused a copy of the foregoing to be served by first class United States mail, postage pre-paid, on the following on this 23rd day of August, 1999.

Robert L. Thompson, Esquire
Taylor, Thiemann & Aitken, L.C.
908 King Street, Suite 300
Alexandria, Virginia 22314
Counsel to Charles E. Crawford

Lee J. Peltzman, Esquire
Shainis & Peltzman, Chtd.
Suite 290
1901 L Street, N.W.
Washington, D.C. 20036
Counsel to Double K Broadcasting

Henry E. Crawford, Esquire
Suite 900
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036-4192
Counsel to Roy Henderson
d/b/a Jackson Lake Broadcasting, Co.
and Cameron Broadcasting Co.

Robert J. Buenzle, Esquire
12110 Sunset Hills Road
Suite 450
Reston, Virginia 22090
Counsel to Centex Broadcasting Co.

Ms. Ann C. Farhat
Bechtel & Cole, Chtd.
Suite 250
1901 L Street, N.W.
Washington, D.C. 20036
Counsel to Elgin FM Limited Partnership

John J. McVeigh, Esquire
12010 Blue Paper Trail
Columbia, Maryland 21044-2787
Counsel to Munbilla Broad. Co.



Jeffrey D. Southmayd